

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 27 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In Re Application Of )  
Telephone And Data Systems, Inc. )  
For Facilities in the Domestic )  
Public Cellular Telecommunications )  
Radio Service on Frequency Block )  
B in Market 715, Wisconsin 8 )  
(Vernon) Rural Service Area )

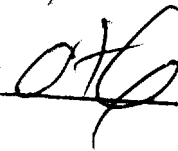
CC Docket No. 94-11

File No.  
10209-CL-P-715-B-88CONSENT MOTION TO INTERVENE

Arthur V. Belendiuk, by his counsel and pursuant to Rule 1.223(c) of the Commission's Rules, hereby moves that he be permitted to intervene as a party for certain limited purposes described herein.

The Hearing Designation Order in this case ("HDO"), Telephone and Data Systems, Inc., 8 FCC Rcd 938 (1994), specified misrepresentation and lack of candor issues against TDS and USCC arising out of a hearing involving an application filed by La Star Cellular Telephone Co. ("La Star") for a wireline cellular telephone system authorization to serve St. Tammany Parish, Louisiana. The HDO repeatedly refers to Mr. Belendiuk, La Star's counsel at the hearing, and, indeed, relies on a portion of a statement apparently made by Mr. Belendiuk on the record as evidentiary support for the designation of the character and misrepresentation issues against TDS and USCC. Id. at 954, 956, 957.

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Mr. Belendiuk is a communications lawyer who primarily practices before this Commission. He could be irreparably injured professionally were this agency to make findings of fact adverse to him in his capacity as La Star's counsel. No present party to this proceeding can adequately represent Mr. Belendiuk's interests. Mr. Belendiuk is not even counsel to a party to this proceeding, and, therefore, he will not even have an indirect occasion to defend his own interest, absent intervention.

The Commission has recognized that there are situations in which the conduct of the attorney practicing before the Commission "is inextricably related to an issue under consideration in [a] licensing proceeding . . . " Opal Chadwell, 2 FCC Rcd 3458 (1987). In those situations, the trier of fact "should make only those findings of fact that are essential to the resolution of the applicant's qualifications," and such findings "may include incidental findings about the attorney's conduct required to evaluate the conduct of an applicant." Id. at 3458.

These "incidental findings" could nevertheless substantially damage an attorney's reputation, particularly where the lawyer had no opportunity to defend his interests in the proceeding. Here, absent intervention for limited purposes, Mr. Belendiuk will have no opportunity in this proceeding to confront or rebut any adverse allegations regarding his conduct, and, thus, any such allegations could be the uncontroverted basis for such "incidental findings."

Consequently, Mr. Belendiuk seeks to intervene, but only with limited party status. He would not file a direct case, initiate discovery, or seek to add issues. His participation would be limited to confronting and rebutting any adverse allegations made in the discovery and trial portions of this proceeding concerning his conduct as La Star's counsel. To do so, he needs party status, albeit limited, in both the discovery and trial portions of this case. Fundamental due process requires nothing less.

Moreover, as shown herein, Mr. Belendiuk's participation with limited party status will assist the Commission in the determination of the issues in questions, to the extent those issues relate to his conduct as La Star's counsel. See 47 C.F.R. § 1.223(b). Thus, intervention with limited party status for Mr. Belendiuk is warranted.

A grant of this consent motion will not disrupt or delay the procedural schedule of this case. Mr. Belendiuk recently retained counsel, who has already participated in meetings with all counsel regarding revisions to a joint agreement regarding discovery scope and procedures.

All parties to this proceeding have consented to a grant of this motion.

Wherefore, Arthur V. Belendiuk respectfully requests that he be granted party status in this proceeding limited to his confronting and rebutting any adverse allegations made concerning his conduct as La Star's counsel.

Respectfully submitted,

  
William H. Crispin  
Dean R. Brenner

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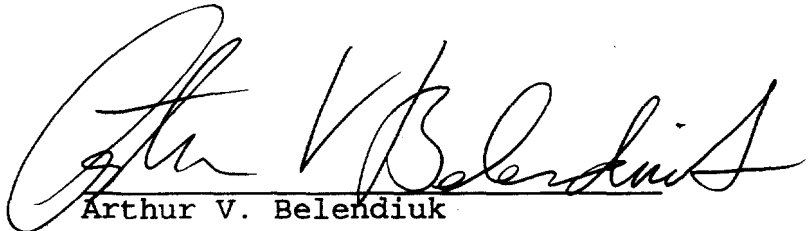
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**AFFIDAVIT OF ARTHUR V. BELENDIUK**

I, Arthur V. Belendiuk, do hereby declare, under penalty of perjury, as follows:

I have read the foregoing "Consent Motion to Intervene." I have personal knowledge of the facts set forth therein, which are true and correct.

Dated: May 27, 1994

  
Arthur V. Belendiuk

**CERTIFICATE OF SERVICE**

I, Dean R. Brenner, do hereby certify that a true and correct copy of the foregoing "CONSENT MOTION TO INTERVENE" and accompanying "AFFIDAVIT OF ARTHUR V. BELENDIUK" was sent by first class U.S. mail, postage prepaid, this 27th day of May, 1994 to:

- |   |  |   |
|---|--|---|
| * | The Hon. Joseph P. Gonzalez<br>Administrative Law Judge<br>Federal Communications Comm.<br>2000 L Street, N.W., Room 221<br>Washington, D.C. 20554 | Kenneth E. Hardman<br>Moir & Hardman<br>2000 L Street, N.W.<br>Suite 512<br>Washington, D.C. 20036  |
| * | Joseph Paul Webber<br>Common Carrier Bureau<br>Federal Communications Comm.<br>1919 M Street, N.W., Room 644<br>Washington, D.C. 20554             | Howard J. Symons<br>James A. Kirkland<br>Mintz, Levin, Cohen, Ferris,<br>Glovsky & Popeo, P.C.<br>701 Pennsylvania Avenue, N.W.<br>Washington, D.C. |
|   | Nathaniel F. Emmons<br>Mullin, Rhyne, Emmons & Topel,<br>P.C.<br>1000 Connecticut Avenue, N.W.<br>Suite 500<br>Washington, D.C. 20036              | Michael Barr<br>Hunton & Williams<br>2000 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20006   |
|   | L. Andrew Tollin<br>Luisa L. Lancetti<br>Wilkinson, Barker, Knauer<br>& Quinn<br>1735 New York Avenue, N.W.<br>Washington, D.C. 20006-5289         | Douglas B. McFadden<br>Donald J. Evans<br>McFadden, Evans & Sill<br>1627 Eye Street, N.W.<br>Suite 810<br>Washington, D.C. 20006                    |
|   | R. Clark Wadlow<br>Mark D. Schneider<br>Sidley & Austin<br>1722 Eye Street, N.W.<br>Washington, D.C. 20006   |   |

  
\_\_\_\_\_  
Dean R. Brenner

\* By Hand